

RFS 'Set' Rule Will Create Method To Allocate Electric Compliance Credits

May 25, 2022

EPA's upcoming "set" proposal to establish biofuel blending volumes under the renewable fuel standard (RFS) when statutory levels expire will for the first time outline a method for the agency to allocate compliance credits for electricity derived from biomass and used in transportation, fulfilling a longstanding request of biogas producers.

Speaking on a May 25 virtual meeting of EPA air policy advisers, Sarah Dunham, director of the Office of Transportation and Air Quality (OTAQ), said EPA aims to propose the rule this year, and confirmed the inclusion of a provision for electric renewable identification numbers (eRINs).

"We plan to establish a regulatory framework to allow RINs," in a development that will likely attract "significant attention," Dunham told the Clean Air Act Advisory Committee's Mobile Sources Technical Review Subcommittee.

Under [a proposed consent decree](#) with biofuels supporters in *Growth Energy v. Regan* in the U.S. District Court for the District of Columbia, EPA has agreed to propose the "set" rule by Sept. 16 and sign a final rule by April 28, 2023. EPA by law should have issued the final set rule in October 2021.

EPA officials had earlier indicated their support for developing eRIN provisions for the RFS in 2023, according to biomass industry officials, but Dunham's statement indicates a proposed framework should be public within months.

Environmental groups in a recent letter to EPA Administrator Michael Regan, however, already warned the agency not to grant eRINs, as any such allocation would be vulnerable to fraud and promote use of biofuels that many environmentalists regard as a false solution to curbing greenhouse gases.

Some even regard biofuels as a source of increased GHG emissions relative to unblended gasoline, contradicting the RFS' requirement to lower climate-warming emissions.

For example, in [a May 23 letter](#) to Regan, 11 groups including Center for Biological Diversity, Earthjustice, Friends of the Earth, National Wildlife Federation and Sierra Club warned the agency not to support steps that will increase biofuels use.

With regard to eRINs, the groups wrote, "Regardless of how the program is designed or who is awarded the credit, new problems with RIN verification and potentially RIN fraud are probable. In climate and environmental terms, the likely electric feedstocks under the cellulosic mandate would become yet another conduit for federal subsidies to harmful sources of bioenergy."

Under the RFS, refiners and importers of fuel must prove compliance by surrendering RINs to the agency sufficient to cover their blending obligation. Refiners can generate RINs themselves through blending, or purchase them from others.

Primary Purpose

Producers of biogas are among the groups lobbying the Biden administration for the ability to generate and sell eRINs, which will be generated from production of electricity from methane and other biogas

that is derived from landfills and other sources such as animal feeding operations, and is then used to generate power that drives electric vehicles.

For years, EPA has resisted allocating eRINs, citing the practical difficulty of doing so and the challenges of ensuring program compliance. The agency has, however, previously approved technical “pathways” for eRIN generation, although these have never enabled eRIN generation under the RFS.

But renewed interest from the Biden White House and lobbying from other groups, such as electric vehicle manufacturer Tesla, has spurred EPA to take action in the context of the “set” rule, though questions remain over precisely which entities will be allowed to generate and trade eRINs, and how EPA will accurately track eRINs and avoid fraud.

The set rulemaking’s primary purpose is to fix annual blending mandates for biofuels in 2023, after statutory blending targets expire this year.

EPA is then left to set blending levels under its own authority, without recourse to using waivers to escape congressional mandates, or to “reset” authority to permanently lower statutory mandates where biofuels production falls far short of mandated levels. The set rulemaking is expected to establish a template for future RFS years beyond 2023.

EPA is using such reset authority in its bid to set blending levels lower than for previous years in its delayed final rules setting volumes for 2021 and 2022 that it must issue by a June 3 deadline under a consent decree agreement with biofuels advocates.

Dunham confirmed EPA’s intent to meet the deadline, and to also issue as part of the package a rule on 2020 volumes which as proposed would retroactively cut volumes for that year. -- *Stuart*

Parker (sparker@iwpnews.com)